

AMENDED IN SENATE APRIL 29, 1999

AMENDED IN SENATE APRIL 14, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 588

Introduced by Senator Rainey

February 23, 1999

An act to amend Section 4009 of the Family Code, and to amend Sections 11350 , 11350.1, and 11477 of the Welfare and Institutions Code, relating to support.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, Rainey. Support obligations to CalWORKs recipients.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families.

Existing law requires that in any case of separation or desertion of a parent or parents from a child or children that results in the granting of CalWORKs benefits, the noncustodial parent or parents shall be obligated to the county for an amount equal to the amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction. In the absence of an order, the noncustodial parent or parents would be liable for the amount of support that would have been specified in such an order, provided that any such amount in excess of the aid paid

to the family under the CalWORKs program shall not be retained by the county, but disbursed to the family.

This bill would provide that liability of a parent or parents under this provision may be made retroactive to the date the complaint or other pleading initiating the support action was served on the defendant. *It would also provide that if the court finds that an obligor has evaded service of a complaint or other initial pleading to establish child support, the court shall order child support retroactive to the date the complaint was filed with the court.*

Existing law requires that the amount of this obligation be determined by using the appropriate child support guidelines currently in effect and requires this obligation to be calculated in a certain manner if one or neither parent is a custodial parent.

This bill would delete this latter requirement and would provide, instead, that if the child does not reside with either parent, the custodial parent's income shall be zero for purposes of determining guideline child support.

Existing law requires that, as a condition of CalWORKs eligibility, the applicant assign to the county any rights to support which he or she may have from another person, either in his or her own behalf or in behalf of any other family member.

This bill would permit, in any action in which support has been assigned to the county by a CalWORKs recipient, upon the stipulation of the district attorney and the support obligor, the court to suspend the prospective accrual of interest on the unpaid judgment, subject to the meeting of specified conditions.

Existing law provides that, in any action brought by the district attorney for the support of a minor child or children receiving CalWORKs benefits, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. Under existing law, judgment in an action brought pursuant to these provisions may be rendered pursuant to a noticed motion.

This bill would further provide that an original support order made pursuant to the above provisions may be made retroactive to the date the complaint or other initial pleading

was served on the defendant being ordered to pay child support.

Existing law also provides generally that any order for child support may be retroactive to the date of filing the notice of motion or order to show cause, or to any subsequent date, except as provided by federal law.

This bill would provide, instead, that an original order for child support may be made retroactive to the date the complaint or other initial pleading was served on the defendant being ordered to pay child support.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4009 of the Family Code is
2 amended to read:

3 4009. An original order for child support may be made
4 retroactive to the date the complaint or other initial
5 pleading was served on the defendant being ordered to
6 pay child support.

7 SEC. 2. Section 11350 of the Welfare and Institutions
8 Code is amended to read:

9 11350. (a) In any case of separation or desertion of a
10 parent or parents from a child or children which results
11 in aid under this chapter being granted to that family, the
12 noncustodial parent or parents shall be obligated to the
13 county for an amount equal to the following:

14 (1) The amount specified in an order for the support
15 and maintenance of the family issued by a court of
16 competent jurisdiction; or in the absence of such court
17 order, the amount specified in paragraph (2).

18 (2) The amount of support which would have been
19 specified in an order for the support and maintenance of
20 the family during the period of separation or desertion
21 provided that this amount in excess of the aid paid to the
22 family shall not be retained by the county, but disbursed
23 to the family. However, a court may order that the
24 liability of a parent or parents under this paragraph may
25 be made retroactive to the date the complaint or other

1 pleading initiating the action was served on the
2 defendant.

3 (3) The obligation shall be reduced by any amount
4 actually paid by the parent directly to the custodian of the
5 child or to the district attorney of the county in which the
6 child is receiving aid during the period of separation or
7 desertion for the support and maintenance of the family.

8 (4) *Notwithstanding any other provision of law, if the*
9 *court finds that an obligor has evaded service of a*
10 *complaint or other initial pleading to establish child*
11 *support, the court shall order child support retroactive to*
12 *the date the complaint was filed with the court.*

13 (b) The district attorney shall take appropriate action
14 pursuant to this section as provided in subdivision (l) of
15 Section 11475.1. The district attorney may establish
16 liability for child support as provided in subdivision (a)
17 when public assistance was provided by another county
18 or by other counties.

19 (c) The amount of the obligation established under
20 paragraph (2) of subdivision (a) shall be determined by
21 using the appropriate child support guidelines currently
22 in effect. If the child does not reside with either parent,
23 the custodial parent's income shall be zero for purposes
24 of determining guideline child support. The parents shall
25 pay the amount of support specified in the support order
26 to the district attorney.

27 SEC. 3. Section 11350.1 of the Welfare and Institutions
28 Code is amended to read:

29 11350.1. (a) Notwithstanding any other statute, in
30 any action brought by the district attorney for the support
31 of a minor child or children, the action may be prosecuted
32 in the name of the county on behalf of the child, children,
33 or a parent of the child or children. The parent who has
34 requested or is receiving support enforcement services of
35 the district attorney shall not be a necessary party to the
36 action but may be subpoenaed as a witness. Except as
37 provided in subdivision (e), in an action under this
38 section there shall be no joinder of actions, or
39 coordination of actions, or cross-complaints, and the
40 issues shall be limited strictly to the question of parentage,

1 if applicable, and child support, including an order for
2 medical support. A final determination of parentage may
3 be made in any action under this section as an incident to
4 obtaining an order for support. An action for support or
5 parentage pursuant to this section shall not be delayed or
6 stayed because of the pendency of any other action
7 between the parties.

8 (b) Judgment in an action brought pursuant to this
9 section, and in an action brought pursuant to Section
10 11350, if at issue, may be rendered pursuant to a noticed
11 motion, that shall inform the defendant that in order to
12 exercise his or her right to trial, he or she must appear at
13 the hearing on the motion. An original order for support
14 made pursuant to this section may be made retroactive
15 to the date the complaint or other initial pleading was
16 served on the defendant being ordered to pay child
17 support.

18 If the defendant appears at the hearing on the motion,
19 the court shall inquire of the defendant if he or she desires
20 to subpoena evidence and witnesses, if parentage is at
21 issue and genetic tests have not already been conducted
22 whether he or she desires genetic tests, and if he or she
23 desires a trial. If the defendant's answer is in the
24 affirmative, a continuance shall be granted to allow the
25 defendant to exercise those rights. A continuance shall
26 not postpone the hearing to more than 90 days from the
27 date of service of the motion. If a continuance is granted,
28 the court may make an order for temporary support
29 without prejudice to the right of the court to make an
30 order for temporary support as otherwise allowed by law.

31 (c) In any action to enforce a spousal support order the
32 action may be pled in the name of the county in the same
33 manner as an action to establish a child support
34 obligation. The same restrictions on joinder of actions,
35 coordination of actions, cross-complaints, and delay
36 because of the pendency of any other action as relates to
37 actions to establish a child support obligation shall also
38 apply to actions to enforce a spousal support order.

39 (d) Nothing contained in this section shall be
40 construed to prevent the parties from bringing an

1 independent action under the Family Code and litigating
2 the issues of support, custody, visitation, or protective
3 orders. In that event, any support, custody, visitation, or
4 protective order issued by the court in an action pursuant
5 to this section shall be filed in the action commenced
6 under the Family Code and shall continue in effect until
7 modified by a subsequent order of the court. To the
8 extent that the orders conflict, the court order last issued
9 shall supersede all other orders and be binding upon all
10 parties in that action.

11 (e) (1) After a support order, including a temporary
12 support order and an order for medical support only, has
13 been entered in an action brought pursuant to this
14 section, the parent who has requested or is receiving
15 support enforcement services of the district attorney shall
16 become a party to the action brought pursuant to this
17 section, only in the manner and to the extent provided by
18 this section, and only for the purposes allowed by this
19 section.

20 (2) Notice of the parent's status as a party shall be
21 given to the parent by the district attorney in conjunction
22 with the notice required by subdivision (e) of Section
23 11478.2. The complaint shall contain this notice. Service
24 of the complaint on the parent in compliance with
25 Section 1013 of the Code of Civil Procedure, or as
26 otherwise provided by law, shall constitute compliance
27 with this section. In all actions commenced under the
28 procedures and forms in effect on or before December 31,
29 1996, the parent who has requested or is receiving
30 support enforcement services of the district attorney shall
31 not become a party to the action until he or she is joined
32 as a party pursuant to an ex parte application or noticed
33 motion for joinder filed by the district attorney or a
34 noticed motion filed by either parent. The district
35 attorney shall serve a copy of any order for joinder of a
36 parent obtained by the district attorney's application on
37 both parents in compliance with Section 1013 of the Code
38 of Civil Procedure.

39 (3) The parent who has requested or is receiving
40 support enforcement services of the district attorney is a

1 party to an action brought under this section for issues
2 relating to the support, custody, and visitation of a child,
3 and for restraining orders, and for no other purpose. The
4 district attorney shall not be required to serve or receive
5 service of papers, pleadings, or documents, or participate
6 in, or attend any hearing or proceeding relating to issues
7 of custody or visitation, except as otherwise required by
8 law. Orders concerning custody and visitation may be
9 made in an action pursuant to this subdivision only if
10 orders concerning custody and visitation have not been
11 previously made by a court of competent jurisdiction in
12 this state or another state and the court has jurisdiction
13 and is the proper venue for custody and visitation
14 determinations. All issues regarding custody and
15 visitation shall be heard and resolved in the manner
16 provided by the Family Code. Except as otherwise
17 provided by law, the district attorney shall control
18 support and parentage litigation brought pursuant to this
19 section, and the manner, method, and procedures used in
20 establishing parentage and in establishing and enforcing
21 support obligations unless and until the parent who
22 requested or is receiving support enforcement services
23 has requested in writing that the district attorney close his
24 or her case and the case has been closed in accordance
25 with federal regulation.

26 (f) (1) A parent who has requested or is receiving
27 support enforcement services of the district attorney may
28 take independent action to modify a support order made
29 pursuant to this section while support enforcement
30 services are being provided by the district attorney. The
31 parent shall serve the district attorney with notice of any
32 action filed to modify the support order and provide the
33 district attorney with a copy of the modified order within
34 15 calendar days after the date the order is issued.

35 (2) A parent who has requested or is receiving support
36 enforcement services of the district attorney may take
37 independent action to enforce a support order made
38 pursuant to this section while support enforcement
39 services are being provided by the district attorney with
40 the written consent of the district attorney. At least 30

1 days prior to filing an independent enforcement action,
2 the parent shall provide the district attorney with written
3 notice of the parent's intent to file an enforcement action
4 that includes a description of the type of enforcement
5 action the parent intends to file. Within 30 days of
6 receiving the notice, the district attorney shall either
7 provide written consent for the parent to proceed with
8 the independent enforcement action or notify the parent
9 that the district attorney objects to the parent filing the
10 proposed independent enforcement action. The district
11 attorney may object only if the district attorney is
12 currently using an administrative or judicial method to
13 enforce the support obligation or if the proposed
14 independent enforcement action would interfere with an
15 investigation being conducted by the district attorney. If
16 the district attorney does not respond to the parent's
17 written notice within 30 days, the district attorney shall
18 be deemed to have given consent.

19 (3) The court shall order that all payments of support
20 shall be made to the district attorney in any action filed
21 under this section by the parent who has requested, or is
22 receiving, support enforcement services of the district
23 attorney unless support enforcement services have been
24 terminated by the district attorney by case closure as
25 provided by federal law. Any order obtained by a parent
26 prior to support enforcement services being terminated
27 in which the district attorney did not receive proper
28 notice pursuant to this section shall be voidable upon the
29 motion of the district attorney.

30 (g) Any notice from the district attorney requesting a
31 meeting with the support obligor for any purpose
32 authorized under this section shall contain a statement
33 advising the support obligor of his or her right to have an
34 attorney present at the meeting.

35 (h) For the purpose of this section, "a parent who is
36 receiving support enforcement services" includes a
37 parent who has assigned his or her rights to support
38 pursuant to Section 11477.



1 (i) The Judicial Council shall develop forms to
2 implement this section. These forms shall be available no
3 later than July 1, 1998.

4 SEC. 4. Section 11477 of the Welfare and Institutions
5 Code is amended to read:

6 11477. As a condition of eligibility for aid paid under
7 this chapter, each applicant or recipient shall do all of the
8 following:

9 (a) (1) Assign to the county any rights to support from
10 any other person the applicant or recipient may have in
11 his or her own behalf or in behalf of any other family
12 member for whom the applicant or recipient is applying
13 for or receiving aid, not exceeding the total amount of
14 cash assistance provided to the family under this chapter.
15 Receipt of public assistance under this chapter shall
16 operate as an assignment by operation of law. An
17 assignment of support rights to the county shall also
18 constitute an assignment to the state. If support rights are
19 assigned pursuant to this subdivision, the assignee may
20 become an assignee of record by the district attorney or
21 other public official filing with the court clerk an affidavit
22 showing that an assignment has been made or that there
23 has been an assignment by operation of law. This
24 procedure does not limit any other means by which the
25 assignee may become an assignee of record.

26 (2) Support that has been assigned pursuant to
27 paragraph (1) and that accrues while the family is
28 receiving aid under this chapter shall be permanently
29 assigned until the entire amount of aid paid has been
30 reimbursed.

31 (3) If the federal government does not permit states to
32 adopt the same order of distribution for preassistance and
33 postassistance child support arrears that are assigned on
34 or after October 1, 1998, support arrears that accrue
35 before the family receives aid under this chapter that are
36 assigned pursuant to this subdivision shall be assigned as
37 follows:

38 (A) Child support assigned prior to January 1, 1998,
39 shall be permanently assigned until aid is no longer

1 received and the entire amount of aid has been
2 reimbursed.

3 (B) Child support assigned on or after January 1, 1998,
4 but prior to October 1, 2000, shall be temporarily assigned
5 until aid under this chapter is no longer received and the
6 entire amount of aid paid has been reimbursed or until
7 October 1, 2000, whichever comes first.

8 (C) On or after October 1, 2000, support assigned
9 pursuant to this subdivision that was not otherwise
10 permanently assigned shall be temporarily assigned to
11 the county until aid is no longer received.

12 (D) On or after October 1, 2000, support that was
13 temporarily assigned pursuant to this subdivision shall,
14 when a payment is received from the federal tax
15 intercept program, be temporarily assigned until the
16 entire amount of aid paid has been reimbursed.

17 (4) If the federal government permits states to adopt
18 the same order of distribution for preassistance and
19 postassistance child support arrears, child support arrears
20 shall be assigned, as follows:

21 (A) Child support assigned pursuant to this
22 subdivision prior to October 1, 1998, shall be assigned
23 until aid under this chapter is no longer received and the
24 entire amount has been reimbursed.

25 (B) On or after October 1, 1998, child support assigned
26 pursuant to this subdivision that accrued before the
27 family receives aid under this chapter and that was not
28 otherwise permanently assigned, shall be temporarily
29 assigned until aid under this chapter is no longer
30 received.

31 (C) On or after October 1, 1998, support that was
32 temporarily assigned pursuant to this subdivision shall,
33 when a payment is received from the federal tax
34 intercept program, be temporarily assigned until the
35 entire amount of aid paid has been reimbursed.

36 (b) In any action where support has been assigned
37 pursuant to this section, upon stipulation of the district
38 attorney and the obligor, the court may order that
39 prospective accrual of interest on the unpaid judgment
40 be suspended, subject to all of the following conditions:

(1) The obligor shall be required to make immediate payment of all outstanding unassigned child support arrearages.

(2) The obligor shall be required to make specified monthly payments toward assigned child support arrearages, calculated to pay off the balance within a reasonable period of time considering the balance owing and the income and assets of the obligor.

(3) The obligor shall be required to meet all current child support payment obligations.

(4) If the family is receiving public assistance at the time a stipulation suspending interest is made, the stipulation and order shall require the obligor to pay the full amount of unassigned child support arrears within 90 days after being notified by the district attorney. The district attorney shall provide this notice within 10 days of being notified that the family is no longer receiving public assistance. The notice shall state only that the total unassigned arrears must be paid within 90 days and shall not provide any information as to the family's public assistance status.

(c) If an obligor who is party to an order made pursuant to subdivision (b) fails to meet any of the conditions stated for more than 60 days, interest shall begin to accrue on any outstanding support obligations. An agreement and order to suspend interest may be made only one time every seven years after the first order was made.

(d) (1) Cooperate with the county welfare department and district attorney in establishing the paternity of a child of the applicant or recipient born out of wedlock with respect to whom aid is claimed, and in establishing, modifying, or enforcing a support order with respect to a child of the individual for whom aid is requested or obtained, unless the applicant or recipient qualifies for a good cause exception as provided in Section 11477.04. The granting of aid shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the district attorney in securing support

1 and determining paternity, where applicable. The
2 district attorney shall have staff available, in person or by
3 telephone, at all county welfare offices and shall conduct
4 an interview with each applicant to obtain information
5 necessary to establish paternity and establish, modify, or
6 enforce a support order at the time of the initial interview
7 with the welfare office. The district attorney shall make
8 the determination of cooperation. If the applicant or
9 recipient attests under penalty of perjury that he or she
10 cannot provide the information required by this
11 subdivision, the district attorney shall make a finding
12 regarding whether the individual could reasonably be
13 expected to provide the information, before the district
14 attorney determines whether the individual is
15 cooperating. In making the finding, the district attorney
16 shall consider all of the following:

17 (A) The age of the child for whom support is sought.

18 (B) The circumstances surrounding the conception of
19 the child.

20 (C) The age or mental capacity of the parent or
21 caretaker of the child for whom aid is being sought.

22 (D) The time that has elapsed since the parent or
23 caretaker last had contact with the alleged father or
24 obligor.

25 (2) Cooperation includes the following:

26 (A) Providing the name of the alleged parent or
27 obligor and other information about that person if known
28 to the applicant or recipient, such as address, social
29 security number, telephone number, place of
30 employment or school, and the names and addresses of
31 relatives or associates.

32 (B) Appearing at interviews, hearings, and legal
33 proceedings provided the applicant or recipient is
34 provided with reasonable advance notice of the
35 interview, hearing, or legal proceeding and does not have
36 good cause not to appear.

37 (C) If paternity is at issue, submitting to genetic tests,
38 including genetic testing of the child, if necessary.

39 (D) Providing any additional information known to or
40 reasonably obtainable by the applicant or recipient

1 necessary to establish paternity or to establish, modify, or
2 enforce a child support order.

3 (3) A recipient or applicant shall not be required to
4 sign a voluntary declaration of paternity, as set forth in
5 Chapter 3 (commencing with Section 7570) of Part 2 of
6 Division 12 of the Family Code, as a condition of
7 cooperation.

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